

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DONALD ALLEN, JAVIER BAUTISTA,
ADAM D. CREWS, SR., ODELL GODFREY,
JEROME JOHNSON, MARK S. LAFLEUR
STEPHEN TANKERSLY, ROBERT L. SMITH,
DUSTIN SNELL, MICHAEL SPEARS, AND
DONALD WOODARD

Civil Action No.
08-03370
cc 09-3500

Judge Nancy Atlas

Plaintiffs

v.

COIL TUBING SERVICES, L.L.C.

Defendant

DEFENDANT’S RESPONSE TO PLAINTIFFS’
REQUEST FOR PERMISSION TO FILE AN INTERLOCUTORY APPEAL

Defendant Coil Tubing Services, L.L.C. (hereinafter “Defendant” or “CTS”), hereby files this Response to Plaintiffs’ Request for Permission to File an Interlocutory Appeal, stating as follows:

I. BACKGROUND

On January 11, 2012, this Court issued its revised Memorandum and Order on the parties’ Motions for Summary Judgment. [Document 300]. Therein, the Court granted relief to Defendant on certain issues and denied relief to both parties on other issues. Footnote 78 of the Court’s opinion states: “The Court recognizes that its rulings involve controlling questions of law as to which there is substantial ground for difference of opinion. Consequently, the Court would entertain requests for an interlocutory appeal, pursuant to 28 U.S.C. § 1292(b).” [Document 300].

On January 12, 2012, Plaintiffs informed Defendant of their intent to file a motion requesting permission to file an interlocutory appeal and asked if Defendant would oppose their motion. In response, Defendant explained that to provide an effective response, it would need to see the issues that Plaintiffs intend to appeal. On January 16, 2012, relying on footnote 78, Plaintiffs filed their Request for Permission to File an Interlocutory Appeal but did not identify any specific issues that they seek to have reviewed on appeal or explain how the review of any such issues would materially advance the ultimate termination of this litigation.

II. DISCUSSION

Pursuant to 28 U.S.C. § 1292(b):

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

Defendant acknowledges that this Court's January 11, 2012, Order recognizes controlling questions of law as to which there is substantial ground for difference of opinion.¹ However, the Court's Order involved numerous legal issues and there has been no identification by Plaintiffs in their Request which specific legal issue(s) they intend to seek to have reviewed. Consequently, Defendant finds it impossible to state a position on

¹ Defendant notes that the Court's order does not state that an immediate appeal from that order may materially advance the ultimate termination of the litigation. Thus, the third prerequisite which would allow a litigant to seek a permissive appeal has not been satisfied.

Plaintiffs' Request. Generally, Defendant suggests that there is no issue of law that it can identify that Plaintiffs may wish to have addressed on appeal that would materially advance the ultimate termination of this litigation.

III. CONCLUSION

For the reasons stated herein, Defendant respectfully states that it is unable to state whether it opposes Plaintiffs' Request for Permission to File an Interlocutory Appeal.

Respectfully submitted,

/s/ Christopher E. Moore

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on the following counsel of record via the Court's Electronic Filing/Notification System:

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This 27th day of January, 2012.

/s/ Christopher E. Moore